

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.D
Mtg. Date June 6, 2017
Dept. City Manager's

Item Title: Resolution Reauthorizing the City's Public, Educational and Governmental Access Fee on State Video Franchises

Staff Contact: Miranda Evans, Management Analyst

Recommendation:

- 1) Staff recommends that the City Council approve a resolution reaffirming authorization for Cox Communications to collect and remit PEG fees on behalf of the City for the certificate renewal period of April 27, 2017 through April 27, 2027 pursuant to LGMC Chapter 13.06.

Item Summary:

The City recently received notice from Cox Communications, LLC ("Cox Communications"), that it has renewed its state-issued franchise. The current state-issued franchise held by Cox Communications expired on April 27, 2017. Due to ambiguity in state law, it is unclear as to whether local agencies need to reauthorize their ordinances in order to continue to collect the PEG fees when a state franchisee renews its franchise with the State. Cox Communications is requesting that the City adopt an ordinance or resolution (**Attachment B**) reaffirming authorization to collect PEG fees under the new state franchise. Should the resolution be adopted, the draft response letter (**Attachment C**) will be sent to Cox Communications via email and USPS First-Class Mail on June 7, 2017.

Fiscal Impact:

In total, the 1% PEG fee amounted to approximately \$57,000 in revenue in FY 2015-2016. Staff estimates that PEG revenue will amount to nearly \$60,000 in revenue by the close of FY 2016-2017. \$60,000 is also the anticipated revenue amount budgeted for FY 2017-2018.

Environmental Review:

- | | |
|--|---|
| <input type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input checked="" type="checkbox"/> Exempt, Section 15060(c)(2); 15060(c)(3) | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Tribal Government Consultation Request |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Notice to property owners within 500 ft. | |

Attachments:

- A. Staff Report
- B. Resolution No. 2017-
- C. Draft Response Letter from City Manager

Attachment A

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.D

Mtg. Date June 6, 2017

Item Title: **Resolution Reauthorizing the City's Public, Educational and Governmental Access Fee on State Video Franchises**

Staff Contact: Miranda Evans, Management Analyst

Background:

The Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") went into effect on January 1, 2007. DIVCA established the California Public Utilities Commission ("CPUC") as the sole franchising authority for video service providers preempting a local entity's right to franchise its cable and video TV operators. Under provisions provided by DIVCA, local governments can establish and collect Public, Educational, and Governmental ("PEG") access fees from the cable and TV operators providing services in a city. In 2007, the City Council adopted Ordinance 363 to add Chapter 13.06 to the Lemon Grove Municipal Code ("LGMC") referred to as Video Franchise Fees, Customer Service and Other Video Related Matters.

Among other things related to state franchisees, LGMC Section 13.06.020 authorizes the collection of a one percent (1%) PEG fee from video service providers with state-issued franchises that provide cable and video TV services within the City of Lemon Grove. It is notable that this section of the LGMC has no expiration.

Discussion:

The City recently received notice from Cox Communications, LLC ("Cox Communications"), that it has renewed its state-issued franchise. The current state-issued franchise held by Cox Communications expired on April 27, 2017. State-issued franchises under DIVCA expire after 10 years and therefore must be renewed with the CPUC. Due to ambiguity in state law, it is unclear as to whether local agencies need to reauthorize their ordinances in order to continue to collect the PEG fees when a state franchisee renews its franchise with the State. Cox Communications has notified the City that a measure of risk exists that funding to the City could be lost unless the 1% PEG fee is reauthorized via an ordinance or resolution. Therefore, Cox Communications is requesting that the City adopt an ordinance or resolution (**Attachment B**) reaffirming authorization to collect PEG fees under the new state franchise. Should the resolution be adopted, the draft response letter (**Attachment C**) will be sent to Cox Communications via email and USPS First-Class Mail on June 7, 2017.

Conclusion:

Staff recommends that the City Council adopt Resolution reaffirming authorization to collect PEG fees from Cox Communications.

Attachment B

RESOLUTION NO. 2017-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA REAFFIRMING AUTHORIZATION TO COLLECT PUBLIC, EDUCATIONAL AND GOVERNMENTAL ("PEG") FEES BY COX COMMUNICATIONS, LLC

WHEREAS, under State law effective January 1, 2007, the City of Lemon Grove acquired certain rights and responsibilities with respect to state video franchise holders including the receipt of Public, Educational and Governmental ("PEG") fees;

WHEREAS, in response to State law, the City of Lemon Grove enacted Ordinance 363 adding Lemon Grove Municipal Code (LGMC) Chapter 13.06 entitled "Video Franchise Fees, Customer Service and Other Video-Related Matters";

WHEREAS, Cox Communications California, LLC dba Cox Communications ("Cox Communications") operates within the boundaries of the City pursuant to LGMC Chapter 13.06;

WHEREAS, Cox Communications has renewed their state franchise certificate number 003 for the period of April 27, 2017 through April 27, 2027; and

WHEREAS, the City of Lemon Grove desires to reaffirm authorization to collect PEG fees by Cox Communications for the certificate renewal period of April 27, 2017 through April 27, 2027 pursuant to LMC Chapter 13.06;.

NOW, THEREFORE, The City of Lemon Grove reaffirms authorization for Cox Communications to collect and remit PEG fees on behalf of the City for the certificate renewal period of April 27, 2017 through April 27, 2027 pursuant to LGMC Chapter 13.06 entitled "Video Franchise Fees, Customer Service and Other Video-Related Matters".

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Attachment C

Draft Letter from City Manager to COX Communications



CITY OF LEMON GROVE "Best Climate On Earth"
City Manager's Department

June 7, 2017

Oscar Urteaga
Manager, Government Affairs
COX Communications
5887 Copley Drive
San Diego, CA 92111-7906

RE: Authorization to Collect PEG Fee under Cox Communication State Franchise

Dear Mr. Urteaga:

I reply to your letter to me dated February 28, 2017 on behalf of Cox Communications ("Cox Communications") seeking authorization from the City of Lemon Grove ("City") to continue collecting the public, educational and governmental access ("PEG") fees under Cox Communication's California Video Franchise Certificate Number 0003, effective April 27, 2017 through April 27, 2027.

As you are aware, pursuant to Lemon Grove Municipal Code ("LGMC") section 13.06.020, all State franchise holders operating within the City shall pay to the City a PEG fee equal to one percent (1%) of the franchise holder's gross revenue. On June 6, 2017, the City Council adopted Resolution Number 2017-XXX to reauthorize the establishment of the PEG fee under the LGMC upon the expiration of Cox Communications' existing State franchise certificate.

Accordingly, the City authorizes Cox Communications to continue collecting the PEG fee to be paid to the City during the period under Cox Communications' new State franchise certificate.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,

Lydia Romero
City Manager

cc: Jim Lough, City Attorney, Lounsbery Ferguson Altona & Peak LLP
Miranda Evans, Management Analyst